

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-OR-387
)	
Jesse C. Ross and Ernestine A. Ross)	NAL/Acct. No.200332620013
Licensee of Broadcast Station WSAO(AM) and)	
Owner of the Antenna Structure at N34° 36' 56" x)	FRN 0008-2084-15
W089° 56' 09")	
Senatobia, Mississippi		

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 18, 2003

By the Enforcement Bureau, New Orleans Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find Jesse C. Ross and Ernestine A. Ross ("Ross"), licensee of radio station WSAO(AM), Senatobia, Mississippi and owner of the antenna structure at North 34° 36' 56" latitude, West 089° 56' 09" longitude, apparently liable for a forfeiture in the amount of twenty-one thousand dollars (\$21,000) for willful violation of Sections 11.35(a) and 73.3526(c)(1) of the Commission's Rules ("Rules"), and willful and repeated violation of Section 17.4(a) of the Rules.¹ Specifically, we find Ross apparently liable for failing to maintain operational Emergency Alert System ("EAS") equipment, failing to register its antenna structure, and failing to make all of the required documents of the public inspection file available during regular business hours.

II. BACKGROUND

2. On November 20, 2002, an agent from the FCC Enforcement Bureau's New Orleans Office inspected WSAO(AM). At the time of the inspection, the station's EAS equipment was not functioning because the encoder/decoder unit was not connected to any operating receivers in order to monitor incoming alert signals or tests. Station personnel were unable to produce any logs noting that EAS tests were sent or received, or any notation that the unit had been removed from service for repair. In addition, the antenna structure registration number was not displayed at the base of the structure, although the structure is 205 feet in height and is painted and lighted. The antenna structure did not appear in the FCC's Antenna Structure Registration records and station personnel could provide no evidence that the antenna structure had been registered. Mr. Ross later acknowledged that Ross owned the antenna structure. Finally, the station's public inspection file consisted of a box of loose papers that contained only the station's contour map and licensee renewal information.

III. DISCUSSION

¹ 47 C.F.R. §§ 11.35(a), 17.4(a), and 73.3526(c)(1).

3. Section 11.35(a) of the Rules states that broadcast stations and cable systems and wireless cable systems are responsible for ensuring that EAS Encoders, EAS Decoders, and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times that the stations or systems are in operation. On November 20, 2002, the station's EAS equipment was not operational as the encoder/decoder was not attached to operating receivers to monitor for alerts. In addition, there were no entries in the station's log to indicate any problem or malfunction of the EAS equipment as required by Section 11.35(b) of the Rules.²

4. Section 17.4(a) of the Rules requires that the owner of any proposed or existing structure that requires notice of proposed construction to the Federal Aviation Administration ("FAA") must register the structure with the Commission. Ross is the owner of this antenna structure. Ross' antenna structure requires notice to the FAA, and thus Commission registration, because the structure's height exceeded 200 feet.³ Ross did not have their antenna structure in Senatobia, Mississippi registered with the Commission.

5. Section 73.3526(c)(1) of the Rules requires that a station's public inspection file be available for inspection at any time during regular business hours. During regular business hours on November 20, 2002, papers identified by station personnel as the station's public inspection file contained only two of the required items: the contour map for WSAO(AM) and the most recent license renewal.

6. Based on the evidence before us, we find Ross willfully⁴ violated Sections 11.35(a) and 73.3526(c)(1) of the Rules and willfully and repeatedly⁵ violated Section 17.4(a) of the Rules by failing to maintain operational EAS equipment, failing to register their antenna structure, and failing to have all required documents in the station's public inspection file available for inspection at any time during regular business hours.

7. Pursuant to Section 1.80(b)(4) of the Rules,⁵ the base forfeiture amount for failing to have EAS equipment installed or operational is \$8,000, the base forfeiture amount for failure to register the antenna structure (failure to file required forms) is \$3,000, and the base forfeiture amount for public inspection file violations is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other

² 47 C.F.R. § 11.35(b).

³ See 47 C.F.R. § 17.7(a).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁵ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁵ 47 C.F.R. § 1.80(b)(4).

such matters as justice may require.⁶ Considering the entire record and applying the factors listed above, this case warrants a \$21,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ Jesse C. Ross and Ernestine A. Ross are hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty-one thousand dollars (\$21,000) for willful violation of Sections 11.35(a) and 73.3526(c)(1) of the Rules and willful and repeated violation of Section 17.4(a) of the Rules by failing to maintain operational EAS equipment, failing to register the antenna structure, and failing to have all required documents of the station's public inspection file available for inspection during regular business hours.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Jesse C. Ross and Ernestine A. Ross SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street S.W., Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁹ See 47 C.F.R. § 1.1914.

purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Jesse C. Ross and Ernestine A. Ross, P.O. Box 190, Senatobia, Mississippi 38668.

FEDERAL COMMUNICATIONS COMMISSION

James C. Hawkins
District Director, New Orleans Office
Enforcement Bureau

Attachment